

Appl. No. 10/776,851
Docket No. CM2687MQ
Amdt. dated January 20, 2009
Reply to Final Office Action mailed on October 20, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 1, 3-7, 9, 12, and 21 are pending in the present application. No additional claim fee is believed to be due.

Claim 1 has been amended. Support for this amendment can be found at least on pages 10-11 and Figure 6 of the originally filed specification. Claims 2, 8, 10-11, and 13-20 were previously canceled without prejudice. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Double Patenting

Claim 1 was provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of copending Application No. 11/717,234. The Office has not indicated any allowable claims with regard to Application No. 11/717,234. Therefore, Applicants do not wish to act upon this provisional rejection at this time. However, at such time that claims are indicated as being allowed in Application No. 11/717,234 or the present application, Applicants request the Examiner contact the undersigned by telephone to discuss the need for a Terminal Disclaimer.

Claim 1 was provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7 and 16 of copending Application No. 11/717,235. The Office has not indicated any allowable claims with regard to Application No. 11/717,235. Therefore, Applicants do not wish to act upon this provisional rejection at this time. However, at such time that claims are indicated as being allowed in Application No. 11/717,235 or the present application, Applicants request the Examiner contact the undersigned by telephone to discuss the need for a Terminal Disclaimer.

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Claim 1 was provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 8 of copending Application No. 11/717,556. The Office has not indicated any allowable claims with regard to Application No. 11/717,556. Therefore, Applicants do not wish to act upon this provisional rejection at this time. However, at such time that claims are indicated as being allowed in Application No. 11/717,556 or the present application, Applicants request the Examiner contact the undersigned by telephone to discuss the need for a Terminal Disclaimer.

Rejection Under 35 U.S.C. §103(a) Over Suzuki

Claims 1, 3-7, 9 and 12 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Suzuki, EP Patent No. 1 088 537 A2.

The Office asserts that it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to optimize the result effective variables in light of Fig. 17 in order to arrive at the instantly claimed invention.

Under MPEP 2142, the Office bears the burden of factually supporting any *prima facie* conclusion of obviousness. In determining the differences between the cited art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. See, *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983). If the Office does not prove a *prima facie* of unpatentability, then without more, the Applicant is entitled to the grant of the patent. See in re *Oetiker*, 977 F.2d 1443.

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the Office must meet three basic criteria. First, there must be some suggestion or motivation, either in the reference itself, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Second, there must be a reasonable expectation of success. Finally, the cited references must teach or suggest all the claim limitations. See, for example, *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). Applicants respectfully assert

that the Office Action fails to meet all of these criteria, and thus fails to make a *prima facie* case of obviousness under 35 U.S.C. §103.

The Suzuki reference is directed to a highly absorbing composite sheet with a highly water absorbing solid resin held in a non-woven substrate sheet. However, there is no teaching or suggestion in Suzuki of an absorbent core having two discontinuous layers of absorbent polymer material that are arranged in such a way that the absorbent polymer material of one layer faces the areas of junction of the other layer. In particular, independent claim 1 requires that the first surface of said first substrate layer and said first surface of said second substrate layer are arranged such that said absorbent material of said first substrate layer faces said areas of junction of said second substrate layer and said absorbent material of said second substrate layer faces said areas of junction of said first substrate layer. This arrangement as required by claim 1 ensures that the first and second substrate layers do not contact each other. In contrast, Suzuki teaches that the absorbent polymer material of one layer (M) faces the absorbent polymer material of the other layer (M') and the absorbent material absent areas of one layer (M) face the absorbent polymer absent areas of the other layer (M'). (See Suzuki Fig. 17).

References relied upon to support a rejection under 35 U.S.C. 103(a) must provide an enabling disclosure, i.e., they must place the claimed invention in the possession of the public. *In re Payne*, 203 U.S.P.Q. 245 (CCPA 1979). Because the cited reference fails to teach all of the claim limitations of claim 1, the Office has not established a *prima facie* case of obviousness and has not placed the presently claimed absorbent article in the possession of the public. Since claims 3-7 and 12 depend from claim 1, the cited reference also fails to teach all of their claim limitations. Therefore, Applicants assert that claims 1, 3-7 and 12 are nonobvious over the cited reference and are in condition for allowance.

Rejection Under 35 U.S.C. §103(a) Over Suzuki And Further In View Of Tanzer

Claims 6 and 21 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Suzuki, EP Patent No. 1 088 537 A2, and further in view of Tanzer, et al., PCT Patent No. WO 01/15647 A1.

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Applicants assert that Suzuki does not render obvious claims 6 and 21 of the presently claimed invention. This reference is discussed above relative to independent claim 1 and the deficiencies are not resolved by Tanzer. Specifically, Tanzer does not teach the core construction as required by claim 1, i.e. a core having two discontinuous layers of absorbent material that are arranged in such a way that the absorbent material of one layer faces the areas of junction of the other layer.

References relied upon to support a rejection under 35 U.S.C. 103(a) must provide an enabling disclosure, i.e., they must place the claimed invention in the possession of the public. *In re Payne*, 203 U.S.P.Q. 245 (CCPA 1979). Because the cited combination fails to teach all of the claim limitations of claim 1, the Office has not established a *prima facie* case of obviousness and has not placed the presently claimed absorbent article in the possession of the public. Since claims 6 and 21 depend from claim 1, the cited combination also fails to teach all of their claim limitations. Therefore, Applicants assert that claims 6 and 21 are nonobvious over the cited combination and are in condition for allowance.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §103. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention from the applied references. In view of the foregoing, reconsideration of this application and allowance of Claims 1, 3-7, 9, 12 and 21 is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By 

John P. Colbert
Attorney for Applicants
Registration No. 45,765
(513) 983-6678

Dated: January 20, 2009
Customer No. 27752